

1 MCNUTT LAW GROUP LLP
2 SCOTT H. MCNUTT (CSBN 104696)
3 SHANE J. MOSES (CSBN 250533)
4 188 The Embarcadero, Suite 800
5 San Francisco, California 94105
6 Telephone: (415) 995-8475
7 Facsimile: (415) 995-8487

8
9 MICHAEL ST. JAMES (CSBN 95653)
10 ST. JAMES LAW, P.C.
11 155 Montgomery Street, Ste. 1004
12 San Francisco CA 94104
13 Telephone: (415) 391-7566
14 Facsimile: (415) 391-7568

15
16 Attorneys for Debtor

17
18
19
20 UNITED STATES BANKRUPTCY COURT
21
22 NORTHERN DISTRICT OF CALIFORNIA
23
24 OAKLAND DIVISION

25 In re

26 Round Table Pizza, Inc.,
27 Debtor.

28 Case No. 11-41431 RLE

(Jointly Administered with Case Nos.
11-41432 RLE, 11-41433 RLE, and
11-41434 RLE)

29 Chapter 11

30
31
32
33
**MOTION FOR ORDER EXTENDING
EXCLUSIVE PERIOD IN WHICH ONLY
THE DEBTOR MAY FILE A PLAN**

34
35 Judge: Hon. Roger Efremsky
36 Date: July 28, 2011
37 Time: 10:00 a.m.
38 Crtrm.: 1300 Clay Street
39 Courtroom 201
40 Oakland, California

1 Round Table Pizza, Inc., The Round Table Franchise Corporation, Round Table
2 Development Company, and Round Table Pizza Nevada LLC, the jointly administered debtors
3 and debtors-in-possession in the above captioned Chapter 11 reorganization cases (collectively
4 "Round Table" or the "Debtor"), hereby jointly move this Court for an order extending the time in
5 which the Debtor has the exclusive right to file a plan of reorganization pursuant to 11 U.S.C. §
6 1121(d) (the "Motion"). In support of the Motion, Round Table respectfully represents as follows:

7 **I. JURISDICTION**

8 This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334(a).
9 Venue is proper pursuant to 28 U.S.C. § 1408 and 1409. The subject matter of the Motion is a
10 core proceeding pursuant to 28 U.S.C §§ 157(b)(2)(A)(L) and (O). Authority for the relief
11 requests exists pursuant to 11 U.S.C. §§ 105 and 1121.

12 **II. FACTS**

13 **A. Debtor's Background**

14 Round Table's first restaurant opened in Menlo Park, California in 1959. Over the past 50
15 years, Round Table has grown to dominate the Northern California market for pizza to become a
16 major West Coast chain with nearly 500 stores in seven States, and to engage in international
17 franchise development.

18 During the same period, Round Table diversified from acting exclusively as a franchisor to
19 also operating company-owned stores, ultimately acquiring and developing 140 company-owned
20 stores and increasing its employee base from 70 to a peak of more than 3,000 employees.

21 During the decade prior to the Great Recession, Round Table enjoyed tremendous growth.
22 Between 1997 and 2006, revenues grew from \$15 million to \$120 million per year, and operating
23 profits grew from \$4.3 million to \$10.5 million. In February of 2007, Round Table obtained a
24 new credit facility. Although Round Table restructured its business to adjust to the Great
25 Recession, the terms of the credit facility could not be met by that restructured business. Efforts to
26 renegotiate the terms of the credit facility were unsuccessful, leading to the instant Chapter 11
27 filing.

1 A fuller presentation of Round Table's background, the circumstances which led to the
2 instant Chapter 11 filing, and Round Table's expectations regarding its reorganization is set forth
3 in the DECLARATION OF J. ROBERT MCCOURT IN SUPPORT OF FIRST DAY MOTIONS filed on
4 February 9, 2011 [Docket No. 13].

5 In connection with Round Table's MOTION TO APPROVE (1) APPOINTMENT OF
6 DISCRETIONARY, INDEPENDENT, AND INSTITUTIONAL ESOP TRUSTEE (2) AMENDMENTS TO ESOP
7 AND TRUST AGREEMENT ORGANIZATIONAL DOCUMENTS, AND (3) TO AFFORD ADMINISTRATIVE
8 EXPENSE STATUS TO THE FEES AND COSTS OF THE ESOP TRUSTEE [Docket No. 380], Round
9 Table demonstrated that its value likely exceeds all secured and unsecured claims, such that this
10 case should generate a recovery to the ESOP which holds its equity as well.

11 **B. Intended Reorganization**

12 There are two core aspects to Round Table's business: acting as a franchisor to
13 independent third party owner-operators, and operating company-owned stores.

14 There are currently 355 franchised stores, with 148 franchisees. The franchise base is
15 highly diversified: 91% of the franchisees own five stores or less, and only two franchisees own
16 20 to 25 stores. Management believes that the franchise segment of Round Table's business is
17 sound, produces stable profits, and does not require material reorganization.

18 Round Table operated 128 company-owned stores. Although most of them are profitable,
19 a number of the stores have been unable to operate profitably in the current economic
20 environment, generating significant losses. Over the first four months of its Chapter 11 case,
21 Round Table has closed unprofitable stores and renegotiated leases with respect to its marginal
22 stores. The results of this effort have been dramatically favorable. Round Table has largely
23 concluded its business reorganization, with the exception of a few stores whose leases may be
24 rejected if suitable lease modifications are not finalized. Round Table expects that its remaining
25 base of company-owned stores will be stable and profitable.

26 Round Table believes that it would be impossible to realize an appropriate value for the
27 company this year. Round Table has therefore proposed a Plan of Reorganization which
28 restructures its debt so that it can operate successfully for a period of five years, by the conclusion

1 of which it would expect to sell the business or refinance the debt. *See*, PLAN OF
2 REORGANIZATION, DATED JUNE 9, 2011, Docket No. 523 (the "Plan"). Further information about
3 Round Table's intended reorganization is presented in the DISCLOSURE STATEMENT TO
4 ACCOMPANY PLAN OF REORGANIZATION DATED JUNE 9, 2011, Docket No. 524 (the "Disclosure
5 Statement"). Approval of Round Table's Disclosure Statement was set for hearing on July 28,
6 2011. *See* NOTICE OF HEARING TO CONSIDER APPROVAL OF DISCLOSURE STATEMENT, Docket
7 No. 525.

8 At an unrelated hearing on July 13, 2011, the Court ruled that the Disclosure Statement
9 hearing would be taken off calendar. Shortly thereafter, the principal parties in the case (the
10 Debtor, GECC/ Prudential, the Creditors Committee, and the ESOP Trustee) commenced a
11 judicially-supervised mediation to attempt to reach agreement on the terms of a consensual plan of
12 reorganization.

13 **III. SUMMARY OF RELIEF SOUGHT**

14 Through this Motion, Round Table seeks an extension, pursuant to § 1121(d), of the time
15 period within which it has the exclusive right to file and seek authorization of a plan of
16 reorganization. Debtor seeks an extension of the exclusivity period by 90 days, to November 6,
17 2011.

18 **IV. LEGAL AUTHORITY**

19 **A. 11 U.S.C. § 1121(d) Permits This Court To Extend Debtors Exclusivity Period**

20 There is no question that this Court has discretion to extend the time in which Round Table
21 has the exclusive right to seek acceptance of a plan. The Bankruptcy Code provides a debtor-in-
22 possession under Chapter 11 with the initial exclusive right to propose a plan of reorganization.
23 *See* 11 U.S.C. § 1121. Only the debtor may file a plan until 120 days after the date of the
24 petition.¹ 11 U.S.C. § 1121(b). If the debtor files a plan within 120 days, the debtor's right to
25 exclusivity continues to 180 days after the petition, in order to allow the debtor time to seek

26
27 ¹ Although § 1121 refers to the date of the "order for relief," the filing of a voluntary petition
constitutes the order for relief, pursuant to § 301(b) of the Bankruptcy Code.
28

1 acceptance and confirmation of its proposed plan. *See* 11 U.S.C. § 1121(c)(3). Thus, if the debtor
2 has filed a plan within 120 days, another party in interest may file a plan only if: "the debtor has
3 not filed a plan that has been accepted, before 180 days after the date of the order for relief under
4 this chapter, by each class of claims or interests that is impaired under the plan." *Id.*

5 These 120- and 180-day periods may be extended on the request of any party in interest.
6 11 U.S.C. § 1121(d). The operative portion of § 1121(d) reads: "...on request of a party in interest
7 made within the respective periods specified... and after notice and a hearing, the court may for
8 cause reduce or increase the the 120-day period or the 180-day period referred to in this section."
9 11 U.S.C. § 1121(d).

10 Although § 1121 provides that the exclusivity period may be extended "for cause," the
11 Bankruptcy Code does not define "cause" or provide any specific standard. The legislative history
12 of § 1121(d), however, reflects a Congressional intent to allow a debtor to remain in control of the
13 bankruptcy process, while recognizing the legitimate interest of creditors in the debtor's case. *See*
14 H.R. REP. NO. 95-595, 95th Cong. 1st Sess. 406 (1977); S. REP. NO. 95-989, 95th Cong. 2d
15 Sess. 118 (1978). Thus, an extension should be based on some showing of probable success in
16 confirming a plan. S. REP. NO. 95-989, 95th Cong. 2d Sess. 118 (1978).

17 The Courts have further interpreted the "cause" standard of § 1121(d) as a broad standard
18 that allows the Court "maximum flexibility to suit various types of reorganization proceedings."
19 *In re Public Service Co. of New Hampshire*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988); *see Gaines*
20 *v. Perkins (In re Perkins)*, 71 B.R. 294, 297 (W.D. Tenn. 1987) ("[t]he hallmark of [§ 1121(d)] is
21 flexibility"). The courts have highlighted numerous factors that can be considered in evaluating
22 whether to extend the exclusivity period. These include: (1) the size and complexity of the case;
23 (2) the amount of time that has elapsed in the case; (3) the existence of good faith progress;
24 (4) whether the debtor is paying its bills as they become due; (5) whether the debtor has
25 demonstrated reasonable prospects of filing a viable plan; (6) the necessity of sufficient time for
26 the debtor to negotiate a plan; (7) whether the debtor has made progress in negotiation with its
27 creditors; (8) whether the debtor is seeking an extension in order to pressure creditors to submit to
28 the debtor's reorganization demands; and (9) whether an unresolved contingency exists. *In re*

1 Express One International, Inc., 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); *see also In re Dow*
2 *Corning Corp.*, 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997). The Ninth Circuit Bankruptcy
3 Appellate Panel has held that the one "transcendent" consideration is whether an extension of the
4 exclusivity period will facilitate moving the case forward, and toward a fair and equitable
5 resolution. *In re Henry Mayo Newhall Memorial Hosp.*, 282 B.R. 444, 453 (9th Cir. B.A.P.
6 2002).

7 **B. The Requested Relief Falls Within the Statutory Time Limits**

8 Round Table filed its Plan and Disclosure Statement on June 9, 2011, within the 120 days
9 provided by § 1121(b). Round Table's exclusivity period therefore expires 180 days after the
10 petition date, or August 8, 2011, unless modified by the Court.

11 In order to allow all parties ample time for review and comment, Round Table set the
12 hearing for approval of its Disclosure Statement on July 28, 2011. Realistically, a hearing on
13 confirmation of the Plan could not occur prior to early September 2011. Consequently, Round
14 Table is seeking an extension of the exclusivity period for 90 days, to November 6, 2011. This
15 date is well within the twenty month limitation set forth in § 1121(d)(2)(B), which would expire
16 sometime in October 2012.

17 **C. Good Cause Exists To Extend the Debtor's Exclusivity Period**

18 An evaluation of the factors identified above clearly shows that cause exists for extension
19 of the exclusivity period.

20 1. **Size and Complexity of the Case**

21 Round Table believes that the size and complexity of this case clearly support an extension
22 of exclusivity. While this is not a massive bankruptcy, it is large, with significant complexities.
23 Courts have recognized that a colossal bankruptcy estate is not a prerequisite to justify an
24 extension of the exclusivity period based on size and complexity. *See In re United Press Int'l.*, 60
25 B.R. 265, 270 (Bankr. D.D.C. 1986) (granting an extension of the exclusivity period for a \$40
26 million company); *Gaines v. Perkins (In re Perkins)*, 71 B.R. 294, 296 (W.D. Tenn. 1987) (finding
27 that a case was sufficiently large to justify an extension where there were approximately 100
28 creditors holding 225 claims against the estate).

1 The size and complexity of the instant case supports the limited extension of exclusivity
2 requested here. The Debtor's claims register lists approximately 1,200 creditors. The value of the
3 company is discussed in detail in the Disclosure Statement, but is clearly sufficiently large to
4 support the necessity of the relief.

5 The substantial number of creditors is indicative of the nature of the Debtor's business.
6 Round Table has approximately 148 franchisees, who operate more than 350 franchised stores.
7 Round Table operates more than 100 company-owned stores. In addition, the Debtor has
8 established relationships with numerous vendors, suppliers, contractors, and service providers.
9 Such connections are the primary basis for the complexities in administering the Debtor's estates
10 as they necessitate review and analysis of numerous claims.

11 2. Amount of Time Elapsed in the Case

12 Fewer than five months have elapsed since Round Table filed its voluntary petitions, in
13 which time it filed its Plan and Disclosure Statement. This is the Debtor's first request for an
14 extension of exclusivity. The requested relief would extend exclusivity to November 6, or
15 approximately nine months from the petition date. This is less than half of the maximum limit on
16 exclusivity provided by the Bankruptcy Code. *See* 11 U.S.C. § 1121(d)(2)(B) (twenty month
17 maximum).

18 3. Existence of Good Faith Progress

19 Round Table has made extensive progress in the case to date. At the time of its petition,
20 Round Table operated 128 company-owned stores. Over the first four months of its Chapter 11
21 case, Round Table has closed unprofitable stores and renegotiated leases with respect to its
22 marginal stores. The results of this effort have been dramatically favorable. Round Table has
23 largely concluded its business reorganization. Round Table expects that its remaining base of
24 company-owned stores will be stable and profitable. Management believes that the franchise
25 segment of Round Table's business is sound, produces stable profits, and does not require material
26 reorganization.

27 Further, Round Table has proposed a Plan and Disclosure Statement which provide for
28 payment in full of all creditors. While Round Table's Disclosure Statement hearing has been taken

1 off calendar, good faith progress continues. The Debtor has commenced a judicially-supervised
2 mediation with the principal parties in the case to attempt to reach agreement on the terms of a
3 consensual plan of reorganization. This clearly represents substantial good faith progress in the
4 case.

5 Finally, Round Table has consistently lived within its cash budget, and has filed its monthly
6 operating reports in a timely fashion.

7 4. The Debtor Is Paying Its Post-Petition Bills as They Become Due

8 Round Table is consistently paying its post-petition bills as they come due. The Debtor
9 also remains current with its fees to the United States Trustee. There is no question that this factor
10 is satisfied.

11 5. The Debtor Has Demonstrated Reasonable Prospects of Filing a Viable Plan

12 There should be no question as to Round Table's ability to propose a viable plan. Round
13 Table has already filed its Plan. As set forth in the Plan and Disclosure Statement, the Debtor has
14 sufficient assets and cash flow to pay all creditors in full over time and still preserve some value
15 for Round Table's ESOP. The Plan and Disclosure Statement demonstrate that not only does the
16 Debtor have reasonable prospects of filing a viable plan, but it already has done so.

17 Although various parties filed objections to its Plan and Disclosure Statement, Round
18 Table submits that the existence of objections does not indicate an absence of reasonable prospects
19 of filing a viable plan. Indeed, the financial ingredients for a viable Plan have already been
20 demonstrated, and the subject of the current mediation is simply the development of consensus
21 around the treatment of the specific creditor classes. Round Table submits that it is evident that a
22 viable Plan can be filed. *See In re Express One*, 194 B.R. at 100 (the factor is whether there is a
23 reasonable prospect of filing a viable plan).

24 6. The Necessity of Sufficient Time for the Debtor to Negotiate a Plan

25 While Round Table has already filed its Plan and Disclosure Statement, additional time is
26 necessary to allow time for both a confirmation hearing and negotiated solutions to any objections
27 that are filed. In order to allow all parties ample time for review and comment, Round Table set
28 the hearing for approval of its disclosure statement on July 28, 2011. Although the Court took that

1 hearing off calendar, the ensuing judicially-supervised mediation resulted in direct and
2 constructive dialog and negotiations regarding the terms of a consensual Plan of Reorganization.
3 It is appropriate that the Court extend exclusivity so that this dialog can lead to the submission of a
4 revised Plan of Reorganization.

5 Round Table seeks a reasonable opportunity to solicit votes for its Plan and negotiate with
6 objecting parties. Given the number of creditors, the size and complexity of Round Table's
7 business and the course of the reorganization to date, there is clearly a need for adequate time to
8 negotiate.

9 7. The Debtor Has Made Progress in Negotiations with Its Creditors

10 The Debtor has been actively involved in negotiations with GECC/Prudential and the
11 Committee since the inception of its cases. The Debtor has recently provided extensive discovery
12 to the Committee in response to a Rule 2004 request, and which information led to productive
13 negotiations. Finally, the parties engaged in a full-day judicially-supervised mediation session on
14 July 19, 2011, and the parties concluded that the effort was sufficiently constructive to warrant
15 scheduling a second full-day session for July 26, 2011. Even where issues are contentious and
16 progress slow, active involvement in negotiation supports extending exclusivity. *See In re Dow*
17 *Corning Corp.*, 208 B.R. at 665.

18 8. The Debtor Is Not Seeking an Extension In Order To Pressure Creditors

19 The requested extension of exclusivity is not for the purpose of improperly pressuring
20 creditors. As discussed above, Round Table has filed its Plan within the time required, but the
21 further exclusivity period is set to expire before Round Table could realistically obtain acceptance
22 and confirmation of its Plan. There cannot be any reasonable contention that the extension is for
23 the purpose of pressuring creditors.

24 9. There Are No Unresolved Contingencies

25 Generally speaking, the types of unresolved contingencies in question are those which are
26 external to the case. *See In re Dow Corning Corp.*, 208 B.R. at 665. Round Table is not aware of
27 any such external contingencies. To the extent that the resolution of the pending motion to

1 appoint an examiner brought by GECC/ Prudential amounts to a contingency, it would arguably
2 support a short extension of exclusivity. *See id.*

3 **D. The Requested Extension Will Facilitate Moving The Case Forward**

4 The factors discussed above are all related to the "transcendent consideration" of whether
5 extending Round Table's exclusivity will facilitate moving the case forward toward a fair and
6 equitable resolution. *See In re Henry Mayo*, 282 B.R. at 453. This is not a case where the debtor
7 has dragged its feet or failed to make meaningful progress. Rather, Round Table has made
8 significant strides in reorganizing its business, which have culminated in filing a Plan and
9 Disclosure Statement within 120 days of its petitions. The purpose of the relief requested is
10 simply to allow Round Table reasonable time to seek acceptance of its Plan and negotiate with
11 creditors, while protected from the interference of competing plans as contemplated by the
12 Bankruptcy Code. *See Matter of Homestead Partners, Ltd.*, 197 B.R. 706, 719 (Bankr. N.D. Ga.,
13 1996) (Noting that "[t]he debtor's exclusive opportunity at plan formulation is a key element in the
14 delicate balance struck by Congress to encourage the consensual development of reorganization
15 plans.")

16 A key part of moving the case forward is allowing the Debtor adequate time to solicit votes
17 and negotiate with creditors regarding its Plan. As the Second Circuit has stated: "In enacting the
18 1978 Code Congress... clearly indicated as one of its purposes that equity interests have a greater
19 voice in reorganization plans-hence, the safeguards of disclosure, voting, acceptance and
20 confirmation in present Chapter 11." *See In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir.1983).
21 Round Table does not believe that it is productive or appropriate for other parties to file competing
22 plans before it has had a reasonable opportunity to negotiate consensual terms with its creditors,
23 solicit votes for its Plan and present the Plan for confirmation. Round Table should have a
24 reasonable time to solicit votes and negotiate with creditors without having the waters muddied by
25 competing plans.

26 ///

27 ///

28 ///

V. CONCLUSION

WHEREFORE, Round Table respectfully requests entry of an Order:

1. Granting the Motion;
2. Extending to November 6, 2011 (or such other date as the Court may hereafter determine) the time during which the Debtor has the exclusive right to file a plan, pursuant to 11 U.S.C. § 1121.
3. For such other relief as the Court finds just and proper.

DATED: July 22, 2011

MCNUTT LAW GROUP LLP

By: _____ /s/ *Shane J. Moses*
Shane J. Moses
Attorneys for Debtor